

No. 16458 ✓

United States
Court of Appeals
for the Ninth Circuit

GEORGE Y. ERLANDSON, Petitioner,

VS.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

Petition to Review a Decision of the Tax Court
of the United States

FILED

JUL - 7 1959

PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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The Tax Court of the United States

Docket No. 65621

GEORGE Y. ERLANDSON, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency Ap-P:AA:HH over 90D:DMK dated December 14, 1956, and as a basis of his proceeding alleges as follows:

1. The petitioner is an individual with residence at Route 1, Box 1345, Florence, Oregon. The return for the period here involved was filed with the District Director of Internal Revenue, Portland, Oregon.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on December 14, 1956.

3. The deficiencies as determined by the Commissioner are in income taxes for the calendar year 1954 in the amount of \$1,960.38 of which amount \$1,672.38 is in dispute.

4. The determination of tax set forth in the said

notice of deficiency is based upon the following errors:

(a) in determining the taxable income of the petitioner for the year 1954 the Commissioner erroneously included wages of \$10,299.97 received by petitioner as compensation for personal services. The Commissioner contends that such compensation for services is includible in gross income in accordance with the provisions of Section 61(a) of the Internal Revenue Code of 1954.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) petitioner is an individual citizen of the United States.

(b) petitioner was present in a foreign country or countries for at least 510 full days in the 18 consecutive month period prior to April 16, 1954 (October 16, 1952 to April 15, 1954).

(c) the said sum of \$10,299.97 was received by petitioner in 1954 as compensation for personal services rendered while so present in foreign countries within said period.

(d) petitioner was not paid by the United States or any agency thereof.

(e) the days set forth in paragraph (b) bear the ratio of the days of 1954 as \$5,753.76 does to \$20,000.00.

Wherefore, the petitioner prays that this Court may hear the proceeding and determine that the sum of \$5,753.76 of the sum of \$10,299.97 received

in 1954 as wages shall not be included in gross income and exempt from taxation and the deficiency due from the petitioner for the year 1954 should not be in excess of \$288.00.

/s/ RALF H. ERLANDSON,
Counsel for Petitioner.

Duly Verified.

EXHIBIT "A"

Appellate Division

P. O. Box 3935, Portland 8, Oregon

Ap-P:AA:HH

90D:DMK

Dec. 14, 1956

Mr. George Yngve Erlandson
Mercer Lake, Route 1 North
Florence, Oregon

Dear Mr. Erlandson:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1954 discloses a deficiency of \$1,960.38, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with the Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiency. In counting the 90 days you may not exclude any day unless the 9th day is a Sat-

urday, Sunday, or legal holiday in the District of Columbia in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays, and legal holidays are to be counted in computing the 90-day period.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Assistant Regional Commissioner (Appellate), P. O. Box 3935, Portland 8, Oregon. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt of the form, or on the date of assessment, or on the date of payment, whichever is the earlier.

Very truly yours,

RUSSELL C. HARRINGTON,
Commissioner,

/s/ By A. N. WILLIAMS,
Associate Chief, Appellate Division.

Enclosures:

Statement

IRS-160

Agreement Form

DMKING rf

EXHIBIT "A"

Ap—P:AA:HH
90D:DMK

STATEMENT

George Yngve Erlandson
Mercer Lake, Route 1 North
Florence, Oregon
(Formerly: Masters, Mates &
Pilots #90, Seattle, Washington)

Income Tax Liability for the Taxable Year Ended December 31,
1954.

Year	Deficiency
1954	\$1,960.38

In making this determination of your tax liability, careful consideration has been given to the report of examination transmitted to you May 23, 1956, to your protest received June 7, 1956, to statements made by you in conference on August 13, 1956 and to statements made by your authorized representative in conferences on August 13, 1956 and November 6, 1956.

A copy of this letter and statement has been mailed to your representative, Mr. Ralf H. Erlandson, 1935 Washington Street, Milwaukie 22, Oregon, in accordance with authority contained in the power of attorney executed by you.

Taxable Year Ended December 31, 1954

Adjustments to Net Income

Net income (loss) disclosed by return\$ (402.48)

Unallowable deductions and additional income:

(a) Wages\$10,299.97

Nontaxable income and additional deduction:

(b) Standard deduction 96.38

Total adjustment increase 10,203.59

Net income as adjusted\$ 9,801.11

Explanation of Adjustments

(a) In the computation of your taxable income you failed to include the seaman's wages of \$10,299.97, which were received by you during the year. It is held that such compensation for services is includible in gross income in accordance with the pro-

visions of Section 61(a) of the Internal Revenue Code of 1954.

(b) Standard deduction of \$1,000.00 is allowed, to your advantage, in lieu of itemized deductions of \$903.62 as shown by return, a reduction in net income of \$96.38.

Computation of Tax

Net income as adjusted	\$9,801.11
Less: Exemptions (3) x \$600	1,800.00
	<hr/>
Taxable income	\$8,001.11
	<hr/>
*Income tax liability—single person	\$1,960.38
Income tax—Liability disclosed by return:	
A/c No. CE-1000065	None
	<hr/>
Deficiency	\$1,960.38
	<hr/>

* Head of Household has not been allowed inasmuch as you did not occupy the household for the entire taxable year.

Served and Entered January 29, 1957.

[Endorsed]: T.C.U.S. Filed January 23, 1957.

[Title of Tax Court and Cause.]

AMENDED ANSWER

The Respondent, in answer to the petition filed in the above-entitled case, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition.
2. Admits the allegations contained in paragraph 2 of the petition.
3. Admits the allegations contained in paragraph 3 of the petition, except that, for lack of sufficient knowledge or information upon the basis of which

to form a belief as to the truth or falsity thereof, denies that only the amount of \$1,672.38 is in dispute.

4. Denies the allegations of error contained in paragraph 4(a) of the petition.

5. (a) Admits the allegations contained in paragraph 5(a) of the petition.

(b), (c), (d) and (e) Denies the allegations contained in paragraph 5(b) to (e), inclusive, of the petition.

6. Denies generally each and every material allegation contained in the petition not hereinbefore specifically admitted, qualified or denied.

Wherefore, it is prayed that the deficiency determined by respondent be in all respects approved.

/s/ NELSON P. ROSE, J.H.P.

Chief Counsel, Internal
Revenue Service.

Of Counsel: Melvin L. Sears, Regional Counsel,
John H. Pigg, Assistant Regional Counsel, Internal Revenue Service, P. O. Box 3935, Portland, Oregon.

Served and Entered May 13, 1957.

[Endorsed]: T.C.U.S. Filed May 8, 1957.

[Title of Tax Court and Cause.]

STIPULATION OF FACTS

It is hereby stipulated that, for the purpose of this case, the following statements may be accepted

as facts, and all exhibits referred to herein and attached hereto are incorporated in this stipulation and made a part thereof; provided, however, that either party may introduce other and further evidence not inconsistent with the facts herein stipulated.

1. The petitioner was employed as navigation officer on the M/V Jumper Hitch during the period in question.

2. The petitioner received the total sum of \$10,-299.97 in 1954, as compensation for personal services performed by the petitioner on the M/V Jumper Hitch.

3. Exhibit 1-A, attached hereto, is a true copy of the Service Agreement, Contract MA-82-GAA, dated April 6, 1951, and Addendum No. 1 to the Service Agreement, Contract MA-82-GAA, dated October 5, 1951, entered into between Pacific Far East Line, Inc. and the United States of America acting by and through the Director, National Shipping Authority of the Maritime Administration, Department of Commerce.

/s/ RALF H. ERLANDSON,
Counsel for Petitioner.

/s/ ARCH M. CANTRALL, G.W.P.
Chief Counsel, Internal Revenue Service, Counsel
for Respondent.

[Endorsed]: T.C.U.S. Filed March 4, 1958.

[Title of Board and Cause.]

TRANSCRIPT OF PROCEEDING

U. S. Court of Appeals, U. S. Courthouse (New),
Portland, Oregon. Monday, March 3, 1958.

(Met, pursuant to notice, at 10:20 o'clock a.m.)

Before: Hon. Bruce M. Forrester, Judge.

Appearances: Ralf H. Erlandson, Esq., 1935
Washington, Milwaukie, Oregon, appearing on be-
half of Petitioner. Jack T. Fuller, Esq., 484 Pit-
tock Block, Portland, Oregon, appearing on behalf
of Respondent. [1]*

* * * * *

GEORGE Y. ERLANDSON

was called as a witness on behalf of the Petitioner
and, having been first duly sworn, testified as
follows:

The Clerk: Will you have a seat, please, sir, and
state your name and address for the record?

The Witness: My name is George Y. Erlandson;
Box 1345, Route 1, Florence, Oregon.

Direct Examination

Q. (By Mr. R. Erlandson): You are the peti-
tioner in this case? [10] A. Yes.

Q. What is your usual occupation, Mr. Erland-
son? A. I am a seaman.

Q. And how long have you been following that
occupation? A. For eighteen years.

Q. And what certificates or licenses do you hold?

* Page numbers appearing at top of page of Reporter's Tran-
script of Record.

(Testimony of George Y. Erlandson.)

A. I have a Master's license.

Q. And is there any limitation on that license?

A. Unlimited.

Q. For any ship and any waters, is that correct?

A. Yes.

Q. How long have you held a Master's license?

A. For nine years.

Q. Between the periods of January 21st, 1952 and April 10th, 1954, were you employed as a seaman?

A. Yes, I was employed by Pacific Far East Lines on the Jumper Hitch as Second Officer.

Mr. Fuller: We object, your Honor. We dispute the fact that he was employed by the United States. We think that is a conclusion of law.

The Court: Bring out the facts, please, from this witness, exactly how he was paid and by what checks and other details of it.

Mr. Fuller: Your Honor, may that answer be stricken from the record? [11]

The Court: Let me hear that answer, please—the question and answer.

(Previous question and answer repeated by Reporter.)

The Court: It will be stricken.

Mr. R. Erlandson: Might I inquire, your Honor, whether the answer was stricken because it was not responsive to my question or on other grounds?

The Court: No, I think it was responsive. It is a conclusion on the part of this witness.

Q. (By Mr. R. Erlandson): Now, you were em—

(Testimony of George Y. Erlandson.)

ployed on the motor vessel Jumper Hitch, is that correct? A. Yes.

Q. During this period from January—— (interrupted) A. Yes.

Q. ——21st, 1952 to April 10th, 1954?

A. Yes.

Q. Now, how are you employed on that vessel? What agreements do you sign?

A. Well, I signed shipping articles, which the first articles were signed for nine months in Portland, Oregon, and on January 16th, I believe, 1952. And those articles terminated in October of 1952 and the articles for the succeeding nine months were originated in San Francisco and flown out to Yokohama where the remainder of the crew signed before the American Consul in Yokohama. [12]

Q. That was the procedure in each of the—— (interrupted)

A. The last two—— (interrupted)

Q. The last two times. And that would have occurred roughly in October of '52?

A. And July of '53.

Mr. R. Erlandson: Would you mark this for identification, please?

The Clerk: Exhibit 2 for identification.

(Whereupon, a document was marked for identification as Petitioner's Exhibit 2.)

Q. Would you tell the Court what this document purports to be?

A. These are a duplicate of the shipping arti-

(Testimony of George Y. Erlandson.)

cles that were signed in Portland, Oregon, in January of 1952.

Q. Do you know how that duplicate was obtained?

A. Yes, it is a photostatic copy of the duplicate of the originals that were obtained from the Shipping Commissioner's office.

Mr. Fuller: Your Honor, we have no objection to this being admitted in evidence.

The Court: All right, it will be received in evidence.

Mr. R. Erlandson: We offer it.

The Court: Without objection. [13]

(Whereupon, the document marked Petitioner's Exhibit 2 for identification was received.)

* * * * *

Q. (By Mr. Erlandson): And the only way that you could possibly have been outside the three-mile limit for twenty-four hours consecutively is if an unusual storm came up—a typhoon? A. Yes.

Q. And you don't recall a single typhoon?

A. No, I don't.

Q. You may resume the witness chair now.

Mr. R. Erlandson: Your Honor, we would like to offer in evidence the Exhibit Number 3 and 4 for identification, as Exhibits 3 and 4.

Mr. Fuller: We have no objection, your Honor.

The Court: They will be admitted.

(Whereupon, the documents marked Petitioner's Exhibits 3 and 4 for identification were received.)

(Testimony of George Y. Erlandson.)

Mr. Fuller: Your Honor, we would like it entered in the record that the lines that he has traced as the ship's course are merely approximations.

Mr. R. Erlandson: Yes, we will agree to that.

The Court: I believe the record so shows.

Q. Now, do you know who owned this—the M/V Jumper Hitch?

A. It was owned by the United States Government.

Q. Do you know—well, this ship was operated by Pacific Far East Lines under a general agency agreement?

A. Yes. [28]

Q. Now, were you aware of any Government regulations affecting the operation of this ship?

A. Of Government—you mean—— (interrupted)

Mr. Fuller: I object, your Honor. This has no significance.

Mr. R. Erlandson: I believe it does, your Honor. The agency agreement states that the United States appoints this steamship company as their general agent and not as an independent contractor and recites the United States can issue regulations and that sort of thing, and I think it is very impertinent to know whether or not any regulations were issued, at least that would come to the notice of the officers of the ship.

The Court: He can answer the question yes or no. I am going to overrule the objection for the time being and then if you want to renew it to any specific regulation that is asked about, you may, of course.

(Testimony of George Y. Erlandson.)

A. No, I didn't come into contact with any regulations emanating from this Federal agency.

Q. Are you familiar with the operation of steamships, generally?

A. In a general way, yes.

Q. You have never served as Master on a vessel?

A. No, I have not.

Q. You have served as Chief Mate on a ship?

A. Yes. [29]

Q. For how long a period of time?

A. For possibly five years as Chief Officer.

Q. And as Chief Officer, did you have a fairly close working contact with the company officials of the various companies you worked for?

A. Yes.

Q. So you had an opportunity to observe their general practices, did you not?

A. Yes, I did.

Q. Well, now, did you have an opportunity to observe the general practice of the shoreside agents in Japan and Korea servicing this ship?

A. Well, our agents in most ports in Japan were United States Lines and I came into contact with the agents as they came aboard the ships. In Korea, our agents were Everett Steamship Company.

Q. And those agents were representing whom?

A. Those agents were representing—— (interrupted)

Mr. Fuller: I object, your Honor, to that question. I believe that calls for a conclusion of which the witness has no knowledge.

(Testimony of George Y. Erlandson.)

The Court: Develop how he knows. Ask him first if he knows and then the balance afterwards.

Q. Do you know who the agents were representing? [30]

A. They were representing—— (interrupted)

The Court: Just answer yes or no.

Q. Just answer yes or no, please. A. Yes.

Q. Well, how do you happen to know that?

A. Well, I don't know how I happen to know it. I can't—— (interrupted)

Q. Well, did you ever have any conversation with the agents?

A. Yes, I did, I had conversation with their agents. Of course, our mail was addressed to United States Lines in Yokohama and our mail in Korea came through Everett Steamship Company.

Q. Did you ever see any correspondence from the Pacific Far East Lines concerning any of these shoreside agents? A. No, I didn't.

Mr. Fuller: We submit, your Honor, that the witness has indicated by his testimony that he is not qualified to testify as to—— (interrupted)

The Court: Well, let's let him go a little further to see what else he is able to develop.

Q. Did you have any conversations with the Master regarding the shoreside agents?

A. Not that I can recall.

Q. It was merely the general reputation on the ship [31] that these agents were—— (interrupted)

Mr. Fuller: Your Honor, we object to that as a leading question. He is leading his own witness.

(Testimony of George Y. Erlandson.)

The Court: It is leading.

Q. Was there a general reputation on the ship as to who the shoreside agents were representing?

Mr. Fuller: We object to that, your Honor. It has no significance.

The Court: I believe that is getting a little remote, the general reputation on the ship as to who the agents were.

Q. By whom were you paid?

A. By Pacific Far East Lines.

Q. And how were you paid?

A. The first two periods, I was paid by check mailed from San Francisco. For the last period, I was paid in cash in San Francisco before the U. S. Shipping Commissioner.

Q. And whom did you receive your money from?

A. From the Port Purser of Pacific Far East Lines.

Q. And that was cash, you say?

A. Yes, the last period was in cash. The first two periods was by check.

Q. And that last period was in April of '54?

A. From July of 1953 until April of 1954.

Q. Yes, and when you received your money, what was the approximate date of that?

A. Approximately the 12th of April, 1954.

Q. And the other two occasions when you received your money, approximately when was that?

A. In approximately November of 1952 and approximately August of 1953.

(Testimony of George Y. Erlandson.)

Q. I see. That is about a month after you signed the articles?

A. Yes, it was some time after we had signed the articles.

Q. Did you receive any periodic advances during this time?

A. Yes, during the voyage, we were permitted draws.

Q. And from whom did you receive the draws?

A. From the ship's purser. The draws were sent by the agent, U. S. Lines. The purser made out a draw list prior to entering a Japanese port. He notified the U. S. Lines as to how much money he needed and the U. S. Lines brought it down.

Q. In currency? A. In Japanese yen.

Q. Japanese yen. Did you receive your money in any other way? Your pay?

A. We received in Korean wen in Korea, but—— (interrupted)

Q. And by whom were you paid the Korean wen? [33]

A. By the ship's purser through the Everett Steamship Company.

Q. Now, do you know how many ships were operating in this area of Japan and Korea under this general agency agreement?

A. There were ten ships similar to the type I was on and probably there were another ten of various other types, Victory ships and Liberties.

Q. The type that you were on is called the Knot ship, is that correct?

(Testimony of George Y. Erlandson.)

A. Yes, C-1-M, AV-1 was the classification.

Q. Yes, it is popularly known as a Knot ship?

A. Yes.

Q. Among seamen?

The Court: How do you spell "knot"?

A. K-n-o-t in this case.

Mr. R. Erlandson: I believe, your Honor, the name comes from—at the beginning, the ships were generally called the Reef Knot or the Square Knot or the Rose Knot.

Q. Was there any difference in the personnel on these ships as far as you knew? The complement of the ships?

A. Some ships carried pursers and some ships did not carry pursers according to the company policy.

Q. Well, could you explain that a little further to the Court, please? [34]

Mr. Fuller: We object, your Honor. This man is not a competent witness to testify as to the company policy of other companies nor their crew members and things of that sort.

The Court: Ask him if he saw it, if he observed it himself on these other ships.

Q. Yes. Did you see that some ships had pursers and others did not?

A. Yes, I know that some companies have a policy of not carrying a purser. They pushed that work on to the Captain of the ship and saved the purser's wages, but Pacific Far East Lines carries pursers on all their ships.

(Testimony of George Y. Erlandson.)

Q. Well, now, specifically, the ships in the Japan and Korea service, under general agency agreement similar to the one with the Pacific Far East Line, can you testify as to any ship that you knew that had a purser or did not have a purser?

A. Well, the Coddington did not have a purser. That was also a Knot ship.

Q. What company operated that?

A. The Coddington was operated by Olympic Steamship Company.

Q. Do you know the company policy of Olympic Steamship Company?

A. No, I don't. I have never been on any Olympic Steamship Company ships. [35]

Q. Well, do you know the company policy of any of these ships with regard to pursers, that is.

Mr. Fuller: Your Honor, I do not see the relevancy of this line of questioning.

The Court: Well, I don't either, but I am going to let him go ahead with it. I believe the witness knows and is answering truthfully.

Q. I will repeat my question: Do you know the company policy with regard to pursers, on any specific ship over there?

A. I know that Pacific Far East Lines carries pursers on all of their ships as does American Mail Line and American President Lines all carry pursers on their ships. West Coast Trans-Oceanic does not carry pursers on their ships.

Q. Did they have a ship over there?

(Testimony of George Y. Erlandson.)

A. Yes, they had one ship. The name escapes me at the moment.

Q. Do you know of your own knowledge whether or not they had a purser on board?

A. No, they had no purser on the West Coast Trans-Oceanic ship.

Q. And on the Jumper Hitch you did have a purser? A. Yes.

Q. In Japan and Korea, from time to time, the ship required supplies and that sort of thing, I take it? A. Yes. [36]

Q. Do you know who furnished the supplies?

A. The supplies are ordered through the agents—U. S. Lines' agents procure the supplies and send them down to the ship.

Q. And who makes the order for supplies?

A. If it's steward's supplies, the Steward makes out the order and it is approved by the Master. If it's deck supplies, the Chief Mate makes out the order.

Q. And would anyone shoreside approve the requisition?

A. It's approved by the agents. The agents can refuse any supplies that they think are not required.

Q. And did you know of your own—— (interrupted)

Mr. Fuller: Your Honor, it is not clear to us when he used the term "agents" whether he means Pacific Far East Line or exactly what.

Mr. R. Erlandson: I believe he has testified,

(Testimony of George Y. Erlandson.)

your Honor, that in Korea, the agents were from the Everett Steamship Company?

A. Yes, Everett Steamship Company.

The Court: I have taken it to mean that he is talking about the so-called shoreside agents at these various points—— (interrupted)

Mr. R. Erlandson: Yes, sir.

The Court: ——rather than any agency of this operating company to the Government of the United States or any other government.

Q. Did you—is that correct, when you use the term “agent”—— (interrupted)

A. When I use the term “agent”, I am referring to the agent of Pacific Far East Lines which was at that time United States Lines in Japan and Everett Steamship Company in Korea. Those were the agents of Pacific Far East Lines.

Q. And these shoreside agents, did they make their approval or rejection of this requisition immediately, or did it take some period of time?

A. Well, of course, if they rejected a requisition, well, there was some discussion about it and I can't recall that they ever were hard to get along with in that respect.

Mr. R. Erlandson: Could we have the Court's indulgence here for a moment? We are checking on the actual returns.

Mr. Fuller: Your Honor, at this time, we would like to offer in evidence, the Petitioner's 1954 income tax return. The W-2 forms are not attached. They are being processed and—— (interrupted)

(Testimony of George Y. Erlandson.)

The Court: Any objection?

Mr. R. Erlandson: I have no objection to the admission of that, no.

The Court: It will be admitted.

(Whereupon, the document was marked for identification as Respondent's Exhibit B and received in evidence.) [38]

* * * * *

The Court: Proceed.

Mr. R. Erlandson: May I ask one or two more questions on direct examination, your Honor?

The Court: Yes.

Direct Examination—(Continued)

Q. (By Mr. R. Erlandson): Was there any union agreement covering your particular occupation during this period in question?

A. Yes, we were covered by this agreement with the Masters, Mates and Pilots, Local 90.

Q. And with whom was that agreement?

A. The agreement was with the Pacific Maritime Association. The Pacific Far East Lines was not a member of the Maritime Association, but they adhered to the same agreement. They had a separate agreement—— (interrupted)

Q. They had a separate—— (interrupted)

A. ——that was identical with the—— (interrupted)

Q. With the agreement between the Master, Mates and Pilots and the—— (interrupted)

A. The PMA—the two agreements were identical.

(Testimony of George Y. Erlandson.)

Q. PMA—you mean the Pacific Maritime Association? A. Pacific Maritime Association.

Mr. R. Erlandson: I wonder, your Honor, if we might stipulate that we could leave the record open to submit a copy of the agreement between the Master, Mates and Pilots [47] organization and the Pacific Far East Lines, Incorporated, or Inc., when it is obtainable. As a matter of fact, we do not have a copy of that agreement. There was none available in Portland.

The Court: Do you have objection to that, Mr. Fuller?

Mr. Fuller: No, your Honor, we have no objection to the record being left open. We would of course want an authenticated copy.

Mr. R. Erlandson: Yes, perhaps we could submit it to you before sending it to the Court.

The Court: That would be better and I think we had better have a time limit on it. We don't want to leave a record open indefinitely. How much time are you going to want for briefs in this case, gentlemen?

Mr. Fuller: Forty-five days would be sufficient for me, your Honor.

Mr. R. Erlandson: That would be sufficient for me. I can submit a brief within that time.

The Court: You think you can get this authenticated copy of the agreement rather quickly?

Mr. R. Erlandson: Yes, I would hope within two weeks.

(Testimony of George Y. Erlandson.)

Mr. Fuller: I think, your Honor, we had better extend that brief period then. [48]

* * * * *

Cross Examination * * * * *

Q. (By Mr. Fuller): Now, prior to that time, you had been paid by check, I take it?

A. Yes, prior two voyages I was paid by check.

Q. Was that check in dollars?

A. Yes, it was in dollars.

Q. Have you had the opportunity to see checks issued generally? Now, I am not talking just about checks issued to crew members, but checks issued generally by the Pacific Far East Line?

A. No, I haven't. I think that was the only checks I have seen issued by the Pacific Far East Line—those two that I received there.

Q. Do you recall any notation on the face of that check near the signature of Pacific—of the officials of Pacific Far East Line, any notation to the effect that that check was to be paid out of funds provided under the National Shipping Authority's revolving fund?

A. Oh, no, there was nothing like that on the check.

Q. You can definitely state that you saw no such notation whatsoever?

A. Well, I am certain I would have noticed it if there had been something to that effect on the check and the check was just Pacific Far East Lines. [54]

* * * * *

[Endorsed]: T.C.U.S. Filed March 25, 1958.

[Title of Tax Court and Cause.]

MOTION TO FILE DOCUMENTS

Come now the parties hereto, by their respective attorneys of record, and, pursuant to leave of the Court granted at the trial of this case at Portland, Oregon, on March 4, 1958, file herewith the following documents as additional evidence in this proceeding: (Tr. pp. 47-48, 49, and 67)

1. Copy of Form W-2, to be attached to and made a part of respondent's Exhibit B, all pursuant to order of Court. (Tr. pp. 39-40)

2. Copy of Memorandum of Agreement dated March 11, 1953, Agreement dated July 30, 1952 and Agreement dated November 14, 1951, attached hereto as Exhibit 6(1), (2) and (3).

/s/ RALF H. ERLANDSON,

Counsel for Petitioner.

/s/ ARCH M. CANTRALL, J.O.P.

Chief Counsel, Internal Revenue Service, Counsel
for Respondent.

Served April 2, 1958.

[Stamped]: The Tax Court of the U. S. Granted
April 1, 1958.

/s/ BRUCE M. FORRESTER.

[Endorsed]: T.C.U.S. Filed March 31, 1958.

T. C. Memo. 1958-218

Tax Court of the United States

George Y. Erlandson, Petitioner, v. Commissioner
of Internal Revenue, Respondent.

Docket No. 65621. Filed December 31, 1958.

MEMORANDUM FINDINGS OF FACT
AND OPINION

Petitioner received wages for his services aboard a ship owned by the United States and operated by a private shipping firm under a general agency contract. Held, the wages were paid by the United States or an agency thereof and thus they were not tax-exempt under section 911(a), I.R.C. of 1954. Robert W. Teskey, 30 T.C. 456, followed.

Ralf H. Erlandson, Esq., for the petitioner. Jack T. Fuller, Esq., for the respondent.

Forrester, Judge: The Commissioner has determined a deficiency in the petitioner's income tax in the amount of \$1,960.38 for the calendar year 1954. The sole issue for determination is whether the petitioner is entitled to a partial exemption for the seaman's wages he earned while serving aboard an American ship operating between ports in Japan and Korea, under section 911(a)(2) of the Internal Revenue Code of 1954.

Findings of Fact

Most of the facts have been stipulated and are included herein by this reference.

The petitioner, a citizen of the United States,

filed his income tax return for the calendar year 1954 with the director of internal revenue for the district of Oregon.

In January 1952, the petitioner signed shipping articles at Portland, Oregon, to serve as Second Officer aboard the M/V Jumper Hitch.

At the trial of this case, respondent contested petitioner's claimed presence in a foreign country as prescribed by section 911(a)(2), Internal Revenue Code of 1954; however, respondent has now conceded this issue. We adopt respondent's language as our finding:

* * * the petitioner, during the 18 consecutive months immediately preceding April 10, 1954, was present in the territorial waters of a "foreign country or countries during at least 510 full days" in that period and received compensation for the services he performed abroad "from sources without the United States."

The United States of America owned the Jumper Hitch. Through and by the Director, National Shipping Authority of the Maritime Administration, Department of Commerce, the United States entered into a general agency agreement for the operation of the ship with Pacific Far East Line, Inc. This Service Agreement, dated April 16, 1951, was contract number MA-82-GAA, and in part provided the following:

This Agreement, made as of April 6, 1951, between the United States of America (herein called the "United States") acting by and through the

Director, National Shipping Authority of the Maritime Administration, Department of Commerce, and, Pacific Far East Line, Inc., a corporation organized and existing under the laws of Delaware, (herein called the "General Agent"):

* * * * *

Article 1. Appointment of General Agent. The United States appoints the General Agent as its agent and not as an independent contractor, to manage and conduct the business of the vessels assigned to it by the United States from time to time and accepted by the General Agent.

Article 2. Acceptance of Appointment. The General Agent accepts the appointment and undertakes and promises so to manage and conduct the business for the United States, in accordance with such directions, orders or regulations not inconsistent with this Agreement as the United States has prescribed, or from time to time may prescribe, and upon the terms and conditions herein provided, of such vessels as have been or may be by the United States assigned to and accepted by the General Agent for that purpose.

Article 3. Duties of the General Agent. For the account of the United States, in accordance with such directions, orders, regulations, forms and methods of supervision and inspection as the United States may from time to time prescribe (or in the absence of such directions, orders, regulations, forms and methods of supervision and inspection, in accordance with reasonable commer-

cial practices and/or the use of customary commercial forms), in an economical and efficient manner, and exercising due diligence to protect and safeguard the interests of the United States in connection with the duties prescribed in this Agreement and without prejudice to its rights under Article 6 hereof, the General Agent (solely as agent of the United States and not in any other capacity) shall:

* * * * *

(b) Collect, deposit, remit, disburse and account for all monies due the United States arising in connection with activities under or pursuant to this Agreement, and to the extent disbursements made by the General Agent pursuant to this Agreement are recoverable from insurance, the General Agent shall take such steps as may be appropriate to effect such recovery for the account of the United States.

* * * * *

(d) Procure the Master of the vessels operated hereunder, subject to the approval of the United States. The Master shall be an agent and employee of the United States, and shall have and exercise full control, responsibility and authority with respect to the manning, navigation and management of the vessel. The General Agent shall procure and make available to the Master for engagement by him the officers and men required by him to fill the complement of the vessel. Such officers and men shall be procured by the General Agent through the usual channels and in accordance with the customary practices of commercial operators

and upon the terms and conditions of the General Agent's collective bargaining agreements, if any. The officers and members of the crew shall be subject only to the orders of the Master. All such persons shall be paid in the customary manner with funds provided by the United States hereunder.

* * * * *

(f) Furnish and maintain during the period that any vessel is assigned and accepted by the General Agent under this Agreement, at its own expense, a bond with sufficient surety in such amount as the United States shall determine such bond to be approved by the United States as to both sufficiency of surety or sureties and form, and to be conditioned upon the due and faithful performance of all and singular the covenants and agreements of the General Agent contained in this Agreement, including without limitation of the foregoing the condition faithfully to account to the United States for all funds collected and disbursed and funds and property received by the General Agent or its sub-agent. The General Agent may, in lieu of furnishing such bond, pledge direct or fully guaranteed obligations of the United States of the cash value of the penalty of the bond under an agreement satisfactory in form to the United States.

No monies or slop chest property of the United States shall be advanced or entrusted by the General Agent to a Master, purser or any other member of the ship's personnel unless such person is

under a bond indemnifying the United States against loss of such monies or property caused solely or in part by the dishonesty or lack of care of any such person in the performance of the duties of any position covered by the bond.

(g)(1) Keep books, records and accounts (which shall be the property of the United States) relating to the activities, maintenance and business of the vessels covered by this Agreement in such form and under such regulations as may be prescribed by the United States; * * *

There is an addendum dated October 5, 1951, to the above agreement providing, in part, the following:

Article 5. Disbursements.

* * * The United States shall also advance funds to the General Agent to provide for, and the General Agent shall receive credit for, all crew expenditures accruing during the term hereof in connection with the vessels assigned hereunder, including, without limitation, expenditures on account of wages, extra compensation, overtime, bonuses, penalties, subsistence, repatriation, internment, travel, loss of personal effects, maintenance and cure, vacation allowances, damages or compensation for death or personal injury or illness, insurance premiums, Social Security taxes, state unemployment insurance taxes and contributions made by the General Agent to a pension or welfare fund with re-

spect to the period of this Agreement and in accordance with a pension or welfare plan in effect on the effective date of this Agreement or which, pursuant to collective bargaining agreements, may become effective during the period of this Agreement with respect to the officers and members of the crew of said vessels who are or many become entitled to benefits under such plan, or any other payment required by law.

It has been orally stipulated that the United States provided the general agent with funds for the wage payments due the officers and crew of the Jumper Hitch from the Civil Operations Revolving Fund created by Congress in 1951. (65 Stat. 59)

In April 1954, the petitioner was paid \$10,299.97 by the United States Government's general agent, Pacific Far East Line, Inc., for his services performed aboard the Jumper Hitch.

The petitioner was so paid by the United States or an agency thereof.

Opinion

The only remaining question for decision is whether the petitioner was paid by the United States or an agency thereof, for, if he was paid

by either, he will not receive the exemption benefit of section 911(a)(2).¹

The recent case of Robert W. Teskey, 30 T.C. 456, involved the same issue, with facts almost identical to those present here, and we there held that the seaman involved in that case was paid by the United States or an agency thereof.

The petitioner admits that the Teskey case is in point, but requests that we overrule it. We have again carefully considered the issue and find no reason to depart from our prior position. Thus, the petitioner was paid by the United States or an agency thereof and his wages are not exempt from taxation under section 911(a)(2).

Decision will be entered for the respondent.

Served January 6, 1959.

¹ Sec. 911. Earned Income From Sources Without the United States.

(a) General Rule.—The following items shall not be included in gross income and shall be exempt from taxation under this subtitle:

* * * * *

(2) Presence In Foreign Country For 17 Months.—In the case of an individual citizen of the United States, who during any period of 18 consecutive months is present in a foreign country or countries during at least 510 full days in such period, amounts received from sources without the United States (except amounts paid by the United States or an agency thereof) if such amounts constitute earned income (as defined in subsection (b)) attributable to such period; * * * [Emphasis supplied.]

Tax Court of the United States
Washington

Docket No. 65621

GEORGE Y. ERLANDSON, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the Memorandum Findings of Fact and Opinion of the Court filed December 31, 1958, it is

Ordered and Decided: That there is a deficiency in income tax for the taxable year 1954 in the amount of \$1,960.38.

[Seal] /s/ BRUCE M. FORRESTER,
Judge.

Entered January 15, 1959. Served January 19, 1959.

United States Court of Appeals
For the Ninth Circuit

T. C. Docket No. 65621

GEORGE Y. ERLANDSON, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR REVIEW

George Y. Erlandson, the petitioner, by Ralf H. Erlandson, his attorney, hereby files this petition for review by the United States Court of Appeals for the Ninth Circuit, of a decision of the Tax Court of the United States, filed and entered on January 15, 1959, determining deficiencies in the petitioner's Federal Income Taxes for the calendar year 1954 in the amount of \$1,960.38, and respectfully shows:

I.

The Petitioner, George Y. Erlandson, is an individual citizen of the United States and filed his income tax return for the calendar year 1954 with the District Director of Internal Revenue, Tacoma, Washington, and thereafter the matter was transferred to the District Director of Internal Revenue, Portland, Oregon, both offices are located within the jurisdiction of the United States Court of Appeals for the Ninth Circuit where this review is sought.

This petition for review is brought pursuant to the provisions of Section 7482 and 7483 of the Internal Revenue Code of 1954.

II.

Nature of Controversy

This controversy involves the proper determination of the Petitioner's liability for federal income taxes for the calendar year 1954.

The Petitioner, an individual citizen of the United States, was employed as navigating officer on the American merchant vessel, the M/V Jumper Hitch, from January 21, 1952, to April 10, 1954.

The United States of America owned the M/V Jumper Hitch. Through and by the director, National Shipping Authority of the Maritime Administration, Department of Commerce, the United States entered into a general agency agreement for the operation of the ship with Pacific Far East Lines, Inc. The Petitioner's employment was pursuant to shipping articles executed between officers and crew on the one hand and the Master of the M/V Jumper Hitch on the other hand, and the collective bargaining agreement between the Master, Mates, and Pilots Association and the Pacific Far East Lines, Inc.

In the Tax Court of the United States, the Respondent conceded that Petitioner, during the eighteen consecutive months immediately preceeding April 10, 1954, was present in the territorial waters of a "foreign country or countries during

at least 510 full days" in that period and received compensation for the services he performed aboard "from sources without the United States."

The only question now involved is whether the Petitioner was paid by the United States or an agency thereof.

III.

Assignment of Errors

The Petitioner assigns as errors the following acts and omissions of the Tax Court of the United States:

1. The making and entry by the Tax Court of the United States of its decision of January 15, 1959.

2. The conclusion of the Tax Court of the United States that Petitioner was paid by the United States or an agency thereof and his wages are not exempt from taxation under Section 911 (A) 2.

Wherefore, your petitioner prays that the United States Court of Appeals for the Ninth Circuit review the decision of the Tax Court of the United States of January 15, 1959, and reverse the determinations therein made.

/s/ RALF H. ERLANDSON,
Attorney for Petitioner.

Duly Verified.

Notice of Filing and Affidavit of Service by Mail Attached.

[Endorsed]: T.C.U.S. Filed March 26, 1959.

[Title of Court of Appeals and T. C. Docket 65621.]

DESIGNATION OF CONTENTS OF RECORD
ON REVIEW

To the Clerk of the Tax Court of the United States:

You will please prepare, transmit, and deliver to the Clerk of the United States Court of Appeals for the Ninth Circuit the original files, documents, and records in the above entitled cause in connection with the Petition for Review heretofore filed by the taxpayer:

1. Pleadings before the Tax Court as follows:
 - a. Petition.
 - b. Amended Answer.
2. The findings of fact and opinion of the Tax Court.
3. The decision of the Tax Court.
4. The Petition for review.
5. From the official transcript of oral testimony, that testimony of Mr. George Y. Erlandson which appears on pages 11 to 13 inclusive; 28 to 38 inclusive; 47 to 48 inclusive, and 54.
6. Exhibits No. 1-A, 2, and 6 (1) (2) and (3).
7. Stipulation of facts.
8. Motion to file documents.
9. This designation of contents of record on review.

/s/ RALF H. ERLANDSON,

Attorney for Petitioner.

Affidavit of Service by Mail Attached.

[Endorsed]: T.C.U.S. Filed March 26, 1959.

[Title of Tax Court and Cause.]

CERTIFICATE

I, Howard P. Locke, Clerk of the Tax Court of the United States, do hereby certify that the foregoing documents, 1 to 12, inclusive, constitute and are all of the original papers as called for by the "Designation of Contents of Record on Review" and "Designation of Additional Portions of Record on Review", including Exhibit 1-A, attached to the Stipulation of Facts, and Petitioner's exhibits 2 and 6 (1), (2) and (3), admitted in evidence, in the case before the Tax Court of the United States docketed at the above number and in which the petitioner in the Tax Court has filed a petition for review as above numbered and entitled, together with a true copy of the docket entries in said Tax Court case as the same appear in the official docket in my office.

In testimony whereof, I hereunto set my hand and affix the seal of the Tax Court of the United States, at Washington, in the District of Columbia, this 14th day of April, 1959.

[Seal] /s/ HOWARD P. LOCKE,

Clerk, Tax Court of the United
States.

[Endorsed]: No. 16458. United States Court of Appeals for the Ninth Circuit. George Y. Erlandson, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Petition to Review a Decision of the Tax Court of the United States.

Filed: April 27, 1959.

Docketed: May 8, 1959.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals
For the Ninth Circuit

Docket No. 16458

GEORGE Y. ERLANDSON, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

STATEMENT OF POINTS

Comes now George Y. Erlandson, the petitioner herein, by his attorney, Ralf H. Erlandson, and hereby asserts the following errors which he intends to urge on review by the United States Court of Appeals for the Ninth Circuit of the decision of the Tax Court of the United States of the above cause entered on January 15, 1959.

1. The Tax Court erred in that it concluded that Petitioner was paid by the United States or an Agency thereof, and his wages are not exempt from taxation under Section 911 (A) 2.

/s/ RALF H. ERLANDSON,
Attorney for Petitioner.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed May 15, 1959. Paul P. O'Brien, Clerk.

United States Court of Appeals
For the Ninth Circuit

Docket No. 16458

GEORGE Y. ERLANDSON, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DESIGNATION OF CONTENTS OF RECORD
ON REVIEW

Comes now George L. Erlandson, the Petitioner herein, by his attorney, Ralf H. Erlandson, and adopts the Designation of Contents of Record on Review as heretofore submitted to the Clerk of the Tax Court of the United States as his designation of contents of record on review in the above matter.

/s/ RALF H. ERLANDSON,
Attorney for Petitioner.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed May 15, 1959. Paul P. O'Brien, Clerk.